

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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JUL 15 1996
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of)	
)	
Amendment of the Commission's Regulatory)	IB Docket No. 96-111
Policies to Allow Non-U.S.-Licensed Space)	
Stations to Provide Domestic and International)	
Satellite Service in the United States)	
)	
and)	
)	
Amendment of Section 25.131 of the Commission's)	CC Docket No. 93-23
Rules and Regulations to Eliminate the)	RM-7931
Licensing Requirement for Certain International)	
Receive-Only Earth Stations)	
)	
and)	
)	
COMMUNICATIONS SATELLITE)	File No. ISP-92-007
CORPORATION)	
Request for Waiver of Section 25.131(j)(1) of the)	
Commission's Rules As It Applies to Services)	
Provided via the Intelsat K Satellite)	

COMMENTS OF GE AMERICAN COMMUNICATIONS, INC.

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July 15, 1996

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SUMMARY

GE Americom strongly supports the Commission's efforts to encourage the liberalization of access policies in markets abroad and to promote competition in the U.S. market for satellite services. However, we suggest that the Commission postpone further action in this proceeding pending completion of the World Trade Organization ("WTO") talks on basic telecommunications.

By deferring this docket temporarily, the Commission can ensure that it has a full record on which to adopt rules regarding service by non-U.S.-licensed satellites. The parties will be in a better position to comment on appropriate rules after we know the results of the WTO negotiations and have the benefit of the information about other administrations' policies that will be gained in the course of the talks.

Focusing initially on the WTO process may also facilitate the achievement of the Commission's goals. Because the WTO negotiations are broad, encompassing all basic telecommunications services, the U.S. will have greater benefits to offer in those talks than it would if it adopts a reciprocity policy that focuses on satellite services alone. In addition, the multi-lateral nature of the talks may minimize the possibility that other administrations would misunderstand U.S. objectives. Such a misunderstanding could result in a "backlash" that might hinder the efforts of U.S. providers to gain access to new markets.

While this proceeding is deferred, the Commission should maintain its existing policies with respect to non-U.S.-licensed satellites. Those policies are

sufficiently flexible to allow the Commission to address special cases, so there is no urgent need to adopt new rules. In particular, the Commission should continue to prohibit COMSAT and other intergovernmental entities from offering service within the United States, absent special circumstances. Continued application of this ban is needed to preserve fair competition in the U.S. market.

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COMMENTS OF GE AMERICAN COMMUNICATIONS, INC.

GE American Communications, Inc. ("GE Americom") hereby
comments on the Notice of Proposed Rule Making in the above-captioned
proceeding, FCC 96-210 (released May 14, 1996) ("*Notice*").

GE Americom strongly supports the Commission's goals of promoting
the liberalization of market entry policies abroad while enhancing competition in
the U.S. satellite market. However, we suggest that moving forward with this
proceeding now would be premature given the extension of the pending World

Trade Organization ("WTO") negotiations on basic telecommunications.

GE Americom and other parties cannot comment effectively on the Commission's proposals until the results of the WTO talks are known. Accordingly, we request that the Commission defer this proceeding until after the conclusion of those talks next February. By deferring this docket, the Commission can effectively restore the procedural sequence that would have occurred had the WTO talks concluded in April. The Commission then can move quickly to complete the record and make a decision once the negotiations are concluded.

In the interim the Commission can retain its existing policies with respect to non-U.S.-licensed satellites. In particular, the Commission should continue to prohibit the delivery of domestic U.S. service by COMSAT or any other affiliate, subsidiary or successor of an intergovernmental organization ("IGO"). This prohibition is needed to prevent disruption of competition in the U.S. market.

BACKGROUND

GE Americom was a pioneer in the domestic satellite market, and its fleet of thirteen spacecraft now provides a full range of telecommunications services to users. In addition, GE Americom has interests in a broad range of global telecommunications ventures. We own a controlling interest in GE STARSYS, which is authorized to construct, launch and operate a fleet of 24 satellites for the provision of "Little LEO" non-voice, non-geostationary data services. GE Americom has also applied for authority from the Commission to construct, launch and operate a constellation of nine Ka-band satellites at five orbital positions permitting service

to North and South America, Europe, parts of Asia, and Australia. In addition, GE Americom and its affiliates are pursuing other satellite ventures, including the installation of VSAT networks worldwide and the delivery of direct-to-home video service to Europe and other parts of the world.

GE Americom strongly supports the efforts of the Commission to promote liberalized access to foreign markets. This issue is critical to the U.S. satellite industry given the increasing globalization of the telecommunications business. We also support the Commission's objective of enhancing choices for satellite consumers within the U.S., while ensuring that the entry of new providers does not unfairly disadvantage existing competitors.

We agree with the Commission's observation that a decision to give non-U.S. satellite systems unrestricted access to the U.S. market could harm competition here if foreign entrants have the ability to serve countries that are closed to U.S. providers. *See Notice* at ¶ 11. Furthermore, such a unilateral move would deprive the U.S. of leverage in pursuing the liberalization of market entry policies abroad.

As a result, GE Americom has generally favored the concept of a reciprocity test for entry into the U.S. market. We have seen such a test as necessary to encourage the opening of markets abroad where U.S. providers experience barriers to entry, and to protect such providers from unfair competition at home.

However, we also recognize that a reciprocity test for satellite services has significant limitations and potential drawbacks. In particular, many countries have no satellite industry at all, or at least no satellite service providers capable of serving the U.S. market. As a result, they have no incentive to try to "pass" a reciprocity test by adopting liberalized market access rules. In addition, adoption of a reciprocity standard might lead to a backlash if other administrations view the standard as unduly restrictive. That in turn could impede rather than enhance U.S. providers' efforts to gain access to markets abroad.

Furthermore, as the Commission acknowledges in the *Notice*, Mobile Satellite Service presents difficulties in determining how a reciprocity standard could be applied. *See Notice* at ¶¶ 45-46. MSS involves communications that can involve a mixture of satellite and landline facilities that originate or terminate with a mobile earth station capable of crossing national borders. As a result, MSS raises unique issues regarding the enforceability of a reciprocity standard.

Obviously, developing a framework that properly balances the protection of U.S. providers from the possibility of unfair competition here at home with the need to encourage the opening of foreign markets presents a difficult challenge. Moreover, promulgating rules that do not achieve that balance could have severe adverse effects. GE Americom believes that it is premature for the Commission to attempt to formulate such rules at this point in the development of foreign trade policies by the trading partners of the United States. Instead, we urge

the Commission to defer this proceeding pending the outcome of the current round of WTO negotiations on basic telecommunications.

In the interim, the Commission must preserve the status quo by maintaining its existing policies with respect to non-U.S.-licensed satellites. In particular, it should continue to restrict the use of IGO facilities for domestic U.S. service. These restrictions are necessary because entry of COMSAT or another IGO entity could seriously disrupt competition in the U.S. market.

**I. THIS PROCEEDING SHOULD BE DEFERRED UNTIL THE
PENDING WTO NEGOTIATIONS ON BASIC
TELECOMMUNICATIONS HAVE BEEN COMPLETED**

As discussed above, GE Americom has a vital interest in the development of market access policies for satellite services. Both the liberalization of entry policies for markets abroad and the preservation of a level playing field in the U.S. market are critical to our ability to offer competitively priced services to our growing customer base. As a result, we strongly support the Commission's commitment to encouraging the opening of foreign markets and to promoting fair competition in the U.S. market.

However, these objectives are also being pursued by the U.S. Trade Representative in the ongoing WTO negotiations concerning basic telecommunications services. Those talks, which have been extended through February 15, 1997, are focused on developing a broad, multilateral agreement regarding the terms of market access for telecommunications.

We believe that the best course for the Commission at this point is to defer this proceeding pending completion of the current round of WTO negotiations. The Commission can then act on a more complete record once the WTO process has been concluded.

In fact, deferring the proceeding as we have requested would effectively restore the procedural sequence that the Commission anticipated when the *Notice* was being prepared. At that time, it was expected that the WTO talks would conclude at the end of April. Had they done so, parties would have had an opportunity to comment on the *Notice* in light of the WTO results, and the Commission could then have acted based on that complete record. GE Americom proposes that the Commission simply shift the schedule of this proceeding to account for the extension of the WTO negotiations.

GE Americom believes that deferral is consistent with the Commission's policy goals. One key feature of the WTO talks in achieving the objective of liberalized access to satellite markets is that the negotiations cover the entire market for basic telecommunications services. As we have noted, a reciprocity test for satellite services alone may have limited effectiveness in encouraging the opening of foreign markets. The "carrot" under such a test -- the ability to provide satellite service to the U.S. market -- is meaningless to a country that has no satellite providers capable of serving the U.S.

In contrast, the WTO negotiations are much broader. The carrot at issue in those talks is access to the entire market for basic telecommunications

services in the U.S. Many countries without their own satellite industries still will have an interest in the ability of their domestic telecommunications providers to access the U.S. market. Thus, the incentive of foreign administrations to commit to liberalization of their own markets will be greater.

In addition, the WTO process involves numerous bilateral and multilateral discussions with other members of the organization. As a result, the U.S. will have the opportunity to describe its objectives and respond to the concerns of other members. This process -- rather than a unilateral declaration of policy -- presents a greater likelihood that the U.S. can avoid misunderstandings of its policy goals. As a result, the possibility of backlash on the part of foreign administrations is reduced.

GE Americom certainly does not intend to downplay the Commission's important role in promoting increased competition in satellite markets. To the contrary, we strongly support active FCC involvement in this issue. As we have noted, the issue is critical to the interests of U.S. satellite providers and users.

Our point, however, is that given the relevance of the WTO talks to the goals of the rulemaking, the most prudent and efficient course of action is to defer this proceeding for seven months. By doing so, the Commission can also avoid any unintended suggestion that the U.S. has prejudged the outcome of the WTO negotiations. Such a perception on the part of other administrations could undercut the effectiveness of the U.S. negotiators.

This brief delay will allow the Commission to make a decision on a more informed basis. Obviously, the results of the WTO talks on basic telecommunications will be highly relevant to the Commission's assessment of appropriate market access policies for satellite services in the future. Assuming the talks result in an agreement, those results should inform this docket. Even if the negotiations do not produce an agreement, however, the discussions themselves are likely to produce significant information regarding the existing policies of foreign governments. Failure of the talks will also influence the views of GE Americom and other parties, and ultimately the FCC, regarding appropriate new rules.

In particular, the reactions of other administrations to U.S. policies will be critical to the effectiveness of such policies in encouraging the liberalization of market access. However, it is unlikely that the record developed by parties commenting today will cast much light on that important issue. By deferring this proceeding, the Commission will be able to take advantage of information culled during the WTO negotiations in evaluating how other governments are likely to respond to its proposals.

Accordingly, GE Americom urges the Commission to defer this proceeding pending the completion of the current WTO negotiations on basic telecommunications. After those talks have terminated, the Commission should seek supplemental comments before determining how to proceed.

II. IN THE INTERIM, EXISTING POLICIES SHOULD CONTINUE

Pending completion of the WTO talks and further action in this docket, the Commission should retain its existing policies with respect to non-U.S.-licensed satellites. In particular, the Commission should continue to prohibit COMSAT and other IGO entities from entering the domestic U.S. market prematurely, before other policy issues are resolved.

A. The Commission Should Preserve the Status Quo With Respect to Foreign-Licensed Satellites

While action in this docket is suspended, the Commission should maintain its current policies regarding non-U.S.-licensed satellites. Those policies permit a case-by-case evaluation of proposals to serve the U.S., allowing the Commission to make individualized public interest determinations. *See Notice* at ¶ 5. Accordingly, there is no immediate need for any change in the Commission's procedures. Certainly GE Americom is aware of no justification for departure from the existing rules that would outweigh the substantial advantages identified above of deferring this proceeding.

In particular, GE Americom believes it would be prudent to maintain the status quo while WTO negotiations are ongoing. This will allow U.S. trade negotiators an opportunity to conclude their discussions before the Commission adopts any new policies.

B. Restrictions on COMSAT and Other IGO Entities Should Be Maintained

It is essential that the Commission also maintain its restrictions on COMSAT and other signatories, subsidiaries and successors of intergovernmental organizations, including the general prohibition on COMSAT's provision of domestic service in the U.S. Given the dominant market position of the IGOs now and for the immediate future, it would clearly be premature to consider allowing them expanded access to the U.S. domestic market.¹

As the Commission has recognized, IGOs have treaty-based privileges and immunities not applicable to other providers of satellite services. *Notice at* ¶ 62. The Commission noted that IGOs "have established dominant positions in the global market by virtue of their size and of the fact that, in general, their members are the primary if not exclusive providers of fixed and mobile maritime services in most major national markets." *Id.*

GE Americom strongly agrees that IGOs enjoy unique preferences that give them substantial competitive advantages over competing satellite providers. Their favored access to foreign markets has created a complete or virtually complete

¹ As noted above, deferral of this proceeding would not limit the Commission's ability to address special circumstances. *See, e.g., Order on Reconsideration and Further Notice of Proposed Rulemaking*, CC Docket No. 87-75, FCC 96-161 (released May 9, 1996) (considering policies to be applied to the use of Inmarsat facilities for traditional aeronautical services).

monopoly on many routes. Their dominant market position also permits them to engage in cross-subsidization.²

The market power held by the IGOs clearly justifies retaining restrictions on their ability to offer services within the U.S. In particular, the Commission should continue to prohibit COMSAT from providing domestic U.S. services, absent special circumstances.³

Maintaining the status quo with respect to IGOs is particularly appropriate given the various restructuring and privatization proposals that are pending. The ultimate outcome of these proposals obviously cannot be predicted now. Furthermore, as the Commission recognizes, "privatization for its own sake" is not consistent with U.S. interests in enhancing competition. *Notice* at ¶ 71. GE Americom agrees that "if IGOs are to provide services in competitive markets, they cannot be permitted to leverage the benefits of their intergovernmental status to unfairly distort competition." *Id.* Whether any of the restructuring proposals would adequately constrain the ability of a newly-formed IGO entity to engage in such anti-competitive behavior clearly remains to be seen.

² See Comments of GE American Communications, Inc. at 12, IB Docket No. 95-41 (filed June 8, 1995).

³ GE Americom notes that COMSAT has petitioned for authority to offer domestic services pending completion of this phase of the docket. Petition for Reconsideration of COMSAT Corporation, IB Docket No. 95-41 (filed Apr. 11, 1996). GE Americom opposed that petition on the grounds that such relief is clearly premature. See Opposition of GE American Communications, Inc., IB Docket No. 95-41 (filed May 21, 1996).

Accordingly, GE Americom requests that the Commission maintain its current treatment of COMSAT and other IGOs during the pendency of this proceeding.

CONCLUSION

GE Americom believes that further action in this proceeding is premature until the basic telecommunications negotiations being conducted through the WTO are completed. As a result, GE Americom asks that the Commission defer this proceeding pending the conclusion of those talks. In the meantime, the Commission should retain its existing policies regarding non-U.S.-licensed satellites. In particular, the Commission must continue to prohibit the provision of U.S. domestic services by COMSAT and other IGO entities.

Respectfully submitted,

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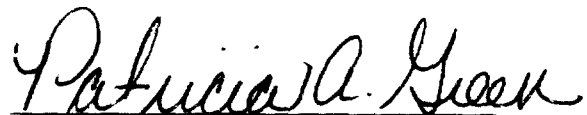
CERTIFICATE OF SERVICE

I hereby certify that on this 15th day of July, 1996, a copy of the foregoing Comments of GE American Communications, Inc. was served by hand delivery addressed to the following:

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